

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES**

UNITED STATES POSTAL SERVICE)	
)	
and)	Case 28-CA-236666
)	
NATIONAL ASSOCIATION OF LETTER)	
CARIERS, SUNSHINE BRANCH 504)	

RESPONDENT’S POST-HEARING BRIEF

Respondent, United States Postal Service (“Postal Service” or “Agency”), pursuant to Section 102.42 of the Board’s Rules and Regulations, as amended, hereby submits its post-hearing brief. According to the order of Administrative Law Judge Amita Baman Tracy, post-hearing briefs must be submitted on or before November 20, 2019.

For the reasons set forth in more detail below, Respondent requests that the allegations set forth in Charge 28-CA-236666 be dismissed. Specifically, the evidence and testimony presented demonstrate no violation of Sections 8(a)(1) and (5) of the Act.

SUMMARY OF ARGUMENT

This case, and all the relevant documents, relates entirely to an incident that occurred on February 9, 2019. A driver was in an accident on that date, the accident was investigated the same day, the carrier was put off work on an “emergency placement” on that day, the union requested documents relied upon for the emergency placement, and the investigating supervisor provided all relevant documents on the same day. Evidence and testimony show that pictures taken at the scene were for tort liability purposes and not for any potential discipline, and were not available on February 9. Any other allegations about untimely provided pictures are a fabrication by the union.

STATEMENT OF FACTS

On Saturday, February 9, 2019, a city carrier assistant¹ named Nastaran Ghazai was delivering mail when she hit a customer's chain link fence at around 10 o'clock AM. Ms. Ghazai then left the scene of the accident, only to return around 11:44 AM after she was tracked down by the customer.² Ms. Ghazai called her supervisor Mike Vigil, who left Five Points Station³ for the scene of the accident. Before leaving the station Mr. Vigil informed another supervisor, Will Holtz, about the accident.⁴

Mr. Vigil went to the scene and conducted his investigation using the required accident investigation worksheet known as a form 1700.⁵ Will Holtz came to the scene with another employee, who drove the slightly damaged Postal vehicle back to the station. Mr. Holtz took pictures of the accident with his phone, and returned to the station with Ms. Ghazai while Mr. Vigil concluded his on-site investigation, which included a statement from the property owner as part of the form 1700.⁶

Mr. Vigil asked Mr. Holtz to have Ms. Ghazai wait at the station for him. When Mr. Vigil arrived back at the station, Angel Martinez, the president of NALC Sunshine Branch 504, was there waiting for him. Mr. Vigil prepared his investigative interview and then conducted it with Ms. Ghazai, Mr. Martinez and a steward for Five Points Station, Charlotte Toledo, in attendance.⁷

After interviewing Ms. Ghazai Mr. Vigil put her off work on an emergency placement (also known as a "16.7")⁸ for failure to report an accident and for leaving the

¹ Tr. p. 44

² Tr. pp. 58, 64

³ Tr. p. 62

⁴ Tr. pp. 67-68

⁵ GC Exh. 3

⁶ Tr. p. 68

⁷ Tr. p. 69

⁸ Tr. p. 48

scene of an accident.⁹ Whereupon Mr. Martinez prepared a request for information (“RFI”) related to this emergency placement¹⁰ and gave it to steward Toledo to present to Mr. Vigil.¹¹ The RFI specifically requested “All materials relied upon and to justify placing Nastaran Ghazai on 16.7.”

In the meantime, Mr. Vigil had requested and received an email from Fredrick Hutchison, an Operations Support Specialist at the Postal Service’s District office in Phoenix, which contained the RIMS report.¹² As he explained in his testimony, the RIMS report shows in real time where carriers are located and where they're moving.¹³ The General Counsel claimed that a picture of the accident scene was included in Mr. Hutchinson’s email, but Mr. Vigil’s un rebutted and credible testimony was that the picture was from Google maps, not from the accident pictures.¹⁴

That same evening of February 9, 2019, Mr. Vigil prepared a package for the union in response to their RFI.¹⁵ Per his cover letter, the response contained

1. PS Form 1700
2. Fact Finding
3. RIMS worksheet
4. 16.7 Letter

Upon receipt of this letter and the entire package, Ms. Toledo acknowledged receipt by her signature on February 9, 2019. The cover letter stated that the RFI was complete but Ms. Toledo did not contest that assertion verbally or in writing. Mr. Vigil testified that Ms. Toledo reviewed the RFI package and verbally informed Mr. Vigil that the package

⁹ Tr. p. 64

¹⁰ GC Exh. 5

¹¹ Tr. p. 69

¹² GC Exh. 6

¹³ Tr. p. 63 [*note: the RIMS report is part of Joint Exh. 2*]

¹⁴ Tr. p. 52

¹⁵ Joint Ex. 2

was what she needed.¹⁶ Ms. Toledo also testified that she did not voice any objection to the information provided.¹⁷

Mr. Holtz returned to work the next Monday, February 11. That evening he emailed the pictures he'd taken at the accident scene to Mr. Vigil.¹⁸ Since he had already left for the day, Mr. Vigil testified that he did not receive the accident pictures until he came to work on Tuesday morning.¹⁹

Accordingly, Mr. Vigil testified that he did not (a) have the pictures when he made the decision to place Ms. Ghazai on emergency placement and (b) he therefore didn't use them as part of his decision-making for the emergency placement.²⁰ Consequently, Mr. Vigil testified that his response to the union's RFI was complete "as I had everything that I used to place her out on a 16.7 at the time."²¹

Much ado has been made about the accident pictures. The union falsely claims that they should have been part of the RFI response. However, the chronology of events shows that this is a specious claim not supported by the facts. Moreover, both Mr. Holtz and Mr. Vigil credibly testified that the pictures were for the tort claim process, not any potential discipline.²² This contention is further buttressed by Respondent's Exhibit 2, the February 12, 2019, email from Stevie Duda to Mr. Vigil. Per Mr. Vigil's testimony, that email provided instructions on what the tort claims people wanted Mr. Vigil to provide.²³ Among those items requested were color pictures of the accident.²⁴

¹⁶ Tr. p. 70

¹⁷ Tr. p. 82

¹⁸ Tr. pp. 30-31; 37 – see also Respondent's Exh 1 – the February 11 emails and enclosed pictures

¹⁹ Tr. p. 58

²⁰ Tr. pp. 58-59

²¹ Tr. p. 60

²² Tr. pp. 26, 28, 35, 37 (Mr. Holtz) & pp. 42, 56, 60

²³ Tr. p. 60

²⁴ Tr. pp. 59-60

The General Counsel also questioned the checked box # 4 in the form 1700, GC Exh. 3, the Accident Investigation Worksheet. That box was checked as part of the tort investigation process because the EHS report would not load unless that box was checked.²⁵ Again, checking that box had nothing to do with any potential discipline for Ms. Ghazai.²⁶

Branch 504 president Angel Martinez testified that he had met with Mr. Vigil and Mr. Holtz about the pictures, and claimed that they had asked him to withdraw the charge in this matter.²⁷ However, on rebuttal neither Mr. Vigil nor Mr. Holtz recalled having any conversation with Mr. Martinez at all about the charge. Mr. Vigil specifically testified that he had had a subsequent meeting with Mr. Chavez, the chief steward for Five Points station in which Mr. Chavez tried to use the charge as leverage to settle Ms. Ghazai's grievance.²⁸

Mr. Holtz was in that same meeting and even recalled the date of that meeting (February 22). He further testified that Mr. Chavez asserted that he "got us" [the Postal Service] for failing to provide the pictures. Mr. Holtz also had no recollection of having a conversation with Mr. Martinez on this topic.²⁹ So either two managers have faulty memories or Mr. Martinez fabricated a story about a meeting that never occurred.

Mr. Martinez was initially evasive when asked if he had even seen the Postal Service's response to the RFI he created. Eventually he testified that he had seen the response without the cover letter written by Mr. Vigil, which frankly strains credulity since the documents were all together in one package. Moreover, Mr. Martinez testified that he did not object to the absence of the pictures at the time (February 9), nor did he

²⁵ Tr. p. 56

²⁶ Tr. pp. 25-26

²⁷ Tr. p. 91

²⁸ Tr. p. 101

²⁹ Tr. p. 105

ever follow up with another information request or even approach management about the pictures.³⁰ Ms. Toledo also testified that she neither objected to the absence of the pictures in the Postal Service's response to her RFI nor did she ever make a separate request for the pictures.³¹

Taken together, the facts show that the accident pictures were not available to Mr. Vigil when he made the decision to put Ms. Ghazai out on a 16.7 emergency placement. Furthermore, the pictures were not taken for disciplinary purposes but for any potential tort claims from the accident. So when Mr. Vigil responded to the February 9, 2019, RFI later that same day, his response was both timely and complete.

ARGUMENT

Supervisor Vigil responded in full to Steward Toledo's subject RFI on the day of receipt, or February 9, 2019--a time frame that is more than reasonable, within contractual deadlines and lawful. See, e.g. *United Engines, Inc.*, 222 NLRB 50, 56 (1976); *General Die Casters, Inc.*, 359 NLRB NO. 7, 61 (2012). In light of the above, Supervisor Vigil did not violate the Act as alleged.

With respect to the pictures allegedly withheld, as clearly stated, Steward Toledo's request sought materials ***relied upon by management*** to place Carrier Ghazaei on Emergency Placement, or Article "16.7". Supervisor Vigil was provided photographs of the accident scene by Will Holtz on ***February 11, 2019***—two days following Carrier Ghazaei's Emergency Placement. Consequently, Supervisor Vigil could not have relied on and did not rely on pictures taken of the scene prior to placing Carrier Ghazaei off-duty. As such, pictures taken at the scene of the accident were not

³⁰ Tr. p. 95

³¹ Tr. pp. 81-82

responsive to this request.

Furthermore, at no time did the union go back to management and request the pictures. In LTD Ceramics, 341 NLRB 86, 87-88 (2004) the Board found that the employer did not violate the Act when it provided information in response to the Union's request, and "any misunderstanding about what additional information the Union still wanted could have been resolved by further communication between the parties. Petition for review denied, 185 Fed. Appx. 581 (9th Cir. 2006); Reebie Storage & Moving Co., 313 NLRB 510, 513 (1993) (same, where the employer responded in good faith to the Union's requests and did nothing to foreclose or discourage the Union from pursuing its interests more actively), enf. denied on other grounds, 44 F.3d 605 (7th Cir. 1995).

CONCLUSION

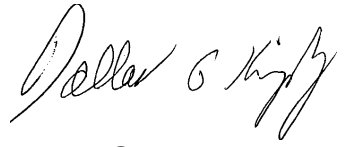
In the instant matter the General Counsel has not established a *prima facie* case. "The burden of proof rests with the General Counsel to establish the necessary elements to meet his initial burden." *J. S. Troup Electric*, 344 NLRB 1009 (2005). The Postal Service avers that the General Counsel has failed to make a *prima facie* case for the following reasons:

- The information was requested and provided on the same day, February 9.
- The information provided to the union was relevant and complete.
- The pictures taken at the accident scene were never intended for disciplinary purposes, nor were they available February 9 for the emergency placement decision.
- Therefore the pictures were not relevant to the RFI.

For the foregoing reasons Respondent respectfully urges dismissal of this Complaint and the underlying charge.

Dated this 20th day of November, 2019.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dallas G. Kingsbury". The signature is fluid and cursive, with the first name "Dallas" being the most prominent.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the foregoing **Respondent's Post Hearing Brief** were sent this 20th day of November, 2019, as follows:

VIA E-FILING

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